IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2190 OF 2005

THE ICICI BANK LTD. ... PETITIONER

Versus

NARENDRA R. PARMAR & Ors. ... RESPONDENTS

Mr. J.P.Cama a/w Mr. R.S.Pai i/b. Sanjay Udeshi & Co. for the Petitioner.

Mr. P.M.Mokashi for Respondent No.1.

Ms. S. Gopal for Respondent No.11.

CORAM: S.K.SHAH,J.

DATE : 20th October,2005.

P.C.

1. Rule, returnable forthwith and heard finally by consent.

2. Impugned herein is the order passed by the Industrial Court, Mumbai, confirming the order passed by the Labour Court whereby the Labour Court, Mumbai, rejected the Application made by the Petitioner that the Complaint is not maintainable in view of the decision of the Apex Court in the case of **Cipla**

Limited V/s. M.G.K.U. (2001 (89) FLR 163 SC) and the Complaint was dismissed against the Petitioner who was Respondent No.1 before that Court.

3. The Respondents are workmen. Their services were terminated by ICICI Investors Services Ltd. which is the subsidiary of the Petitioner. Therefore, the Respondents filed Complaint, being Complaint (ULP) No.382 of 1998 alleging unfair labour practice practised by the Petitioner as well as ICICI Investors Services Limited under items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act. The Petitioner as well as he other Respondents who were the Respondents to the complaint had filed Written Statement wherein they disputed the relationship of employer and employee between the Petitioner and the Respondents herein. The Labour Court framed the issues in 1999 and then proceeded to record evidence. The complainant's evidence was recorded. Thereafter, the Petitioner filed an Application (Exhibit "J" to the Petition). The Application was to the following effect :-

> "In view of the Judgment of the Supreme Court in the case of Cipla Limited v/s. M.G.K.U. (2001 (89) FLR 163

SC), the above Complain filed against the 1st Respondent (who is Petitioner herein) (now known as ICICI Bank Limited) is not maintainable and therefore the above Complaint is liable to be dismissed against the 1st Respondent (i.e. the Petitioner herein)".

4. The Labour Court by order dated 24.8.2004 dismissed the Application at Exhibit C-18. Against that order, Review was filed before the Industrial Court and the Industrial Court by the impugned order dismissed the Review Application.

5. Inter alia, the Labour Court as also the Industrial Court observed taking into consideration the documentary evidence for the purpose of holding that there was no dispute about relationship of employer and employee between the Petitioner and the respondents.

6. The learned Counsel for the Petitioner relying on the Judgment of the Division Bench of this Court in the case of **Hindustan Coca Cola Bottling S/W Pvt. Ltd. vs. Bhartiya Kamgar Sena & Ors.**reported in 2001 III CLR 1025, submitted that from the pleading before the

Labour Court itself there was a dispute as to the relationship of employer and employee between the Petitioner and the Respondents and, therefore, the Labour Court had no jurisdiction to proceed with the Complaint and the Complaint was not maintainable before the Labour Court. He, therefore, submits that both the Courts had erred in dismissing the Application, being Exhibit C-18.

7. As against this, the learned Counsel for the Respondents submits that in case of six of the Respondents, letters of appointment were issued by the Petitioner stating therein that they were employed with the Petitioner. He further submits that in case of four of the employees, appointment letters were issued by the Petitioner appointing those four employees as the employees of ICICI Investor Services Ltd. He further submits that even the cheques for the salaries are issued by the Petitioner as also the cheques for payment of bonus.

8. The learned Counsel for the Petitioner however submits that as held by the Division Bench in Hindustan Coca Cola bottling S/W Pvt.Ltd., what is required to be seen is whether it is a case that there is no undisputable or indisputable employer-employee relationship and if this is so,the Labour Court cannot

entertain the Complaint. Thus, if on perusal of the pleadings itself, there is dispute about this relationship, then the Labour Court has no jurisdiction at all. The relevant observations of the Division Bench of this Court in the aforesaid case are as under :-

> "We are in respectful agreement with the above view expressed by Khandeparkar, J. If on a bare reading of the complaint, the Industrial Court of the Labour Court as the case may be, is satisfied that it has no jurisdiction to decide the complaint as there is no undisputed or indisputable employer-employee relationship, the occasion for framing an issue on that count would not arise. If the Industrial Court or the Labour Court is satisfied that there is no undisputed or indisputable the employer-employee relationship, it cannot assume jurisdiction to entertain the complaint and the complaint will have to be dismissed as not maintainable."

It is pertinent to note that this observation is made by

the Division Bench of this Court after considering various decisions of the Apex Court including the decision in the case of Cipla Limited vs. Maharashtra General Kamgar Union & Ors. reported in 2001 1 CLR 754.

9. The position that emerges is that on a bare reading of the complaint, the Industrial Court or the Labour Court, as the case may be, is satisfied that it has no jurisdiction to decide the complaint as there is no undisputed or indisputable employer-employee relationship, there is no question of framing such issue by the Labour Court and there is also no question of entertaining the complaint.

10. This being the position, both the Courts below erred in considering the evidence led in deciding whether there was any dispute with regard to the employer-employee relationship between the Petitioner and the Respondents. The orders, therefore, cannot stand and the impugned order as well as the order passed by the Labour Court will have to be set aside. What the Labour Court is required to consider is the complaint as observed by the Division Bench of this Court and should find out whether it is a case that there is undisputed or indisputable employer-employee relationship between the Petitioner and the Respondents, then alone the Labour Court will have jurisdiction. If

on a perusal of the complaint, the Labour Court finds that there is a dispute about relationship of employer-employee between the Petitioner and the Respondents, then the Labour Court has no jurisdiction to decide that dispute and, as such, there is no question of framing such issue by the Labour Court for decision. Thus, the Labour Court must see the complaint and satisfy itself whether it is a case of undisputable or indisputable employer-employee relationship between the Petitioner and the Respondents and if the answer is yes, then entertain the complaint and if the answer is no, the complaint not being maintainable should not be maintained.

11. The Petition is, therefore, allowed. The impugned orders passed by the Industrial Court as also passed by the Labour Court are set aside. The matter is remanded back to the Labour Court, Mumbai. The Labour Court shall consider the application in the light of the observations of the Division Bench of this Court and decide the maintainability of the complaint and then pass necessary orders on the Application made by the Petitioner on 2.7.2004. The Labour Court shall decide the Application made by the Petitioner expeditiously, but not later than 31st December, 2005.

12. The learned Counsel for the Petitioner makes a

statement that the Petitioner will withdraw the Revision Application (ULP) No.169 of 2004 pending in the Industrial Court, Mumbai, in view of this order.

13. It is made clear that the Labour Court should not be influenced by any of the observations made herein or made by the Industrial Court in the impugned order.

Rule made absolute accordingly. The Writ Petition stands disposed of.

Certified copy expedited.

(S.K.SHAH,J.)